

OGC HAS REVIEWED.

27 August 1956

MEMORANDUM FOR: Mr. Houston

SUBJECT : The Dalton Case

1. I have read the Dalton Case and there are only two points which I would add to the material included in memoranda of 1951.

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a. The case was decided in January 1931. Section 59a was not enacted until June 1932.

b. There was a dissent, by only one of the five judges however, which seems more convincing, although based on a somewhat confused argument. The dissent points out that a purpose of the statute was to prevent the Government from being to the expense of two salaries, this being of particular necessity since many persons receiving some sort of pay from the Government were being called upon to engage in different work in connection with the war. The dissent concedes the majority's point that the plaintiff "was not an officer of the United States and does not hold a United States office", but holds that "it does not follow that the plaintiff was exempt from the provisions of the act which, as we have seen, does not specify that the office must be one of that class" (p. 429). It is clear that plaintiff held an office and the question "is not whether he was an official of the Federal Government but whether he held such an office as was contemplated by that act" (p. 429). The dissent continues:

"It was well understood that the Emergency Fleet Corporation would not be able to meet its expenses from its ordinary receipts and that the Federal Government would have to make up the difference. In other words, plaintiff's salary would in the long run have to be paid by the Government. The case therefore seems to me to belong to a class which was intended to be reached by the statute" (page 429).

The dissent also admits the majority's point that the Emergency

Fleet Corporation was an entity distinct from the United States, but contends this does not prevent the application of the statute, relying on the language of the case of Emergency Fleet Corporation vs. Western Union Telegraph Co., 275 U.S. 415, 422 as follows:

"These services of the Fleet Corporation were obviously of a public nature. It has never done any business or conducted any operation except on behalf of the United States."

(The majority also noted that the Western Union case held that the Emergency Fleet Corporation was a department of the Government, but was of the opinion that that case "does not go to the extent of holding that persons employed by the Emergency Fleet Corporation thereby become officers or employees of the United States within the meaning of" Section 62 (p. 427).) The dissent further notes that the Court acknowledged the Emergency Fleet Corporation was a private corporation "in form" but called attention to the fact that all of its capital was subscribed on behalf of the United States, that the United States alone had a financial interest in its capital stock, and that "to hold that the commercial rate for messages should be paid by it or its officers in transacting the public business would necessarily increase the charges on the public treasury to the same extent as if the business had been 'done for it by some other department of the Government'." (p. 430).

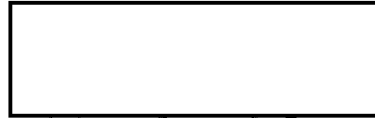
2. The dissent concludes that if the officers of the Fleet Corporation can be, as was held in the Western Union case, officers of a department of the Government of the United States within the meaning of the Post Roads statute "I am unable to see why they should not also be considered to hold an office within the meaning of the act under consideration in the instant case" (p. 431).

3. The dissent seems somewhat contradictory. It concedes the majority view that officers of the Fleet Corporation did not hold offices of the United States, and contends this does not prevent the application of the statute. But it appears to make its case on the ruling in the Western Union case that if the Fleet Corporation officers may be held to be officers of a department of the Government "I am unable to see why they should not also be considered to hold an office within the meaning of the act under consideration".

4. It may be noted that in the Western Union case the court held that the Fleet Corporation was "entitled to the government rate, not

because it is an instrumentality of the Government, but because it is a department of the United States within the meaning of the Post Roads Act" (275 U.S. 415, 426).

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